

Numerous issues were brought to the Board upon appeal by the various parties. However, in its brief to the Board, Utica acknowledged that the principal issue dealt with

the determination of the date of accident in the claim, thereby determining which insurance carrier would be liable for the coverage of this claim.

Respondent's attorneys and claimant's attorney agreed at oral argument before the Board that the issues dealing with the nature and extent of disability and the calculation of the permanent disability were no longer in dispute, as the parties had no disagreement with either the task or wage loss determined by the Administrative Law Judge. Additionally, the attorneys for both Utica and Allied agreed that the dispute created by the Administrative Law Judge's Supplement To Award is rendered moot by the Board's de novo review of the Administrative Law Judge's Award and Supplement to Award of May 16, 2002. Therefore, the only disputes before the Board in this matter are the appropriate date of accident and claimant's entitlement to the out-of-pocket medical expenses in the amount of \$412.22 and outstanding medical expenses in the amount of \$38,770.20.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds that the Award of the Administrative Law Judge and the Supplement to Award should be affirmed.

Claimant suffered accidental injury on February 2, 2000, when he and another employee were lifting a piece of marble weighing between 380 and 420 pounds. Claimant experienced a sudden onset of pain when his back popped. Claimant advised his employer, Clay Tucker, about the accident and was referred to Dr. David by Mr. Tucker. Claimant was then referred to Gregory H. Mears, D.O., and was also treated by Dr. Chapman as well. Claimant was ultimately referred to the University of Kansas Medical Center where he came under the care of Paul M. Arnold, M.D. Dr. Arnold recommended surgery and referred claimant to orthopedic surgeon David K. Ebelke, M.D. Claimant first saw Dr. Ebelke on May 11, 2000, providing Dr. Ebelke with a history of injury while moving a heavy piece of marble on February 15, 2000. He advised Dr. Ebelke that he then developed severe low back pain with onset of left hip pain and radiating pain into his left leg.

Dr. Ebelke also recommended surgery, which claimant underwent on May 12, 2000, consisting of an L4-5 discectomy and fusion with instrumentation and bone grafting. He was released from Dr. Ebelke's care on December 1, 2000, with restrictions that he remain in the medium lift category, which involves a maximum occasional lift of 50 pounds. As the nature and extent of claimant's injury is no longer in dispute, the Board will forego a recitation of any facts dealing with claimant's functional impairment, wage loss or task loss.

When claimant first suffered injury and was referred to Dr. Mears, he was placed on light duty within the first week. Claimant acknowledged Dr. Mears wanted him to remain at full duty and to stay active. However, the lifting involved in claimant's job was, thereafter, limited. Claimant acknowledged that his back continued to worsen. But no health care provider who testified in this matter could say within a reasonable degree of

medical probability that claimant's ongoing physical activities at work caused his back to permanently worsen. Dr. Ebelke testified that the only history he was provided was of a sudden onset in February 2000 while lifting a heavy weight.

Claimant was referred to P. Brent Koprivica, M.D., in Lenexa, Kansas, on January 10, 2001. This referral was by claimant's attorney, and Dr. Koprivica only examined claimant on one occasion. Dr. Koprivica determined that claimant sustained an acute disc herniation at L4-5 as a result of the February 2000 lifting activities. In Dr. Koprivica's opinion, the event on February 2, 2000, was the date on which claimant sustained the impairment. Dr. Koprivica's functional impairment rating was applied specifically to the February 2000 injury.

Claimant was referred to C. Reiff Brown, M.D., an orthopedic surgeon, who examined claimant at the request of respondent Utica on December 14, 2001. Dr. Brown testified that, in his opinion, claimant injured his lumbar area in early February 2000. He acknowledged that claimant continued working after the original onset, but was also aware that claimant was placed on light duty shortly after the injury. Dr. Brown testified that claimant's activities after the initial February 2, 2000 accident could possibly cause development of increased symptomatology, depending upon the severity of his physical movements. He also testified that claimant's disc herniated when he started experiencing leg pain. Claimant testified at regular hearing that the leg pain started shortly after the initial injury of February 2, 2000.

When a primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is the direct and natural result of the primary injury.¹

In this instance, the Board finds that claimant suffered accidental injury on February 2, 2000, while lifting a heavy piece of marble. While claimant alleged additional symptoms with his later activities, the Board does not find that claimant suffered a new injury or series of injuries after the February incident. The worsening, in the Board's opinion, was a natural consequence of the original injury and, therefore, compensable as an injury of February 2, 2000. All liability associated with claimant's injuries would stem from that date of accident.

With regard to the Supplement to Award of May 16, 2002, the Board finds that the issues determined by the Administrative Law Judge had been presented to the Administrative Law Judge at regular hearing. The Administrative Law Judge had neglected to decide those issues at the time of the Award. It is not appropriate to file a supplement to an award or an amended award. It is beyond the jurisdiction of the Administrative Law

¹ *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, Syl. 2, 564 P.2d 548 (1977); *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

Judge. The Board, however, having de novo review over the Administrative Law Judge's decisions, does have the power to determine those issues. The Board finds that claimant has incurred and should be reimbursed for out-of-pocket medical expenses in the amount of \$412.22 and outstanding medical expenses in the amount of \$38,770.20.

The Board, therefore, finds that the Award of the Administrative Law Judge should be affirmed and, additionally, reimbursement of out-of-pocket medical expenses and payment of the outstanding medical expenses should be awarded claimant as held above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated May 16, 2002, should be, and is hereby, affirmed, and claimant is granted an award against the respondent and its insurance carrier for a date of accident of February 2, 2000, for a 92 percent permanent partial general disability, for a total award not to exceed \$100,000. In addition, claimant is awarded out-of-pocket medical expenses in the amount of \$412.22 and outstanding medical expenses in the amount of \$38,770.20.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

IT IS SO ORDERED.

Dated this ____ day of January 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Leah Brown Burkhead, Attorney for Claimant
Jeffrey S. Austin, Attorney for Respondent and Insurance Carrier (Utica)
Jeffery R. Brewer, Attorney for Respondent and Insurance Carrier (Allied)
Jon L. Frobish, Administrative Law Judge
Director, Division of Workers Compensation